

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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TERENCE FEURY,	:	
Plaintiff	:	CIVIL ACTION
v.	:	
PROVCO VENTURES I LP,	:	No. 09-CV-1341
PROVCO LLC,	:	
VILLANOVA 789 LANCASTER	:	
ASSOCIATES, LLC, and	:	
MAIA LLC,	:	
Defendants.	:	

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**RESPONSE BY PROVCO VENTURES I, L.P., AND PROVCO, LLC TO  
PLAINTIFF'S MOTION FOR SANCTIONS AGAINST DEFENDANT,  
VILLANOVA 789 LANCASTER ASSOCIATES, LLC**

Plaintiff's Motion for Sanctions Against Defendant, Villanova 789 Lancaster Associates, LLC ("Villanova 789"), is not directed to Co-Defendants, Provco Ventures I, L.P., and Provco, LLC. Nevertheless, Provco Ventures I, L.P., and Provco, LLC, briefly respond to Plaintiff's Motion as set forth herein.

Plaintiff's Motion is premised on alleged prejudice resulting from Villanova 789's failure to respond to written discovery and produce a corporate designee for deposition pursuant to Rule 30(b)(6). What Plaintiff fails to state in his motion is that the corporate designee of Villanova 789 with knowledge concerning the topics for the Rule 30(b)(6) deposition is Scott Morrison. Mr. Morrison, as Plaintiff notes in his motion papers, has been unable to appear for deposition due to an automobile accident and other personal complications. In fact, counsel for Plaintiff was specifically advised at the January 27, 2010 deposition of Jerry Holtz that Scott Morrison would be Villanova 789's corporate designee for the subject matter identified in Plaintiff's deposition notice. See J. Holtz deposition transcript, at 6-7, Exhibit "A" hereto.

Mr. Morrison's personal circumstances are matters beyond the control of Villanova 789. There is no suggestion that Villanova 789 has induced Mr. Morrison to evade his responsibility to appear for deposition. Accordingly, Plaintiff's request for the imposition of sanctions against Villanova 789 should be denied by the Court.

To the extent that Plaintiff seeks an Order requiring Villanova 789 to produce a corporate designee for deposition (i.e., Scott Morrison), Co-Defendants, Provco Ventures I, L.P., and Provco, LLC, do not object.

Respectfully submitted,

By: /s/ David R. Moffitt  
David R. Moffitt, Esquire  
Saul Ewing LLP  
1200 Liberty Ridge Drive, Suite 200  
Wayne, PA 19087-5569  
(610) 251-5758

*Attorney for Defendants,  
Provco Ventures I, LP, and Provco LLC*

Dated: March 19, 2010

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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TERENCE FEURY,	:	
Plaintiff	:	CIVIL ACTION
v.	:	
PROVCO VENTURES I LP,	:	No. 09-1341
PROVCO LLC,	:	
VILLANOVA 789 LANCASTER	:	
ASSOCIATES, LLC, and	:	
MAIA LLC,	:	
Defendants.	:	

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**CERTIFICATE OF SERVICE**

I, David R. Moffitt, Esquire, hereby certify that on this 19<sup>th</sup> day of March, 2010, I caused to be served a true and correct copy of the Response by Provco Ventures I, L.P., and Provco, LLC, to Plaintiff's Motion for Sanctions Against Defendant, Villanova 789 Lancaster Associates, LLC, upon counsel for Plaintiff, Terence Feury, and Defendant, Villanova 789 Lancaster Associates, LLC, as follows:

*Via Electronic and U.S. Mail, Postage Prepaid*

Brett A. Datto, Esquire  
CIPRIANI & WERNER  
Suite 200  
450 Sentry Parkway  
Blue Bell, PA 19422  
*Attorney for Plaintiff, Terence Feury*

Scott R. Reidenbach, Esquire  
150 North Radnor Chester Road  
Suite F200  
Radnor, PA 19087  
*Attorney for Villanova 789 Lancaster Associates, LLC*

*/s/ David R. Moffitt*  
David R. Moffitt, Esquire

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TERENCE FEURY :  
:  
Plaintiff (s):  
:  
vs. :  
:  
THE PROVCO GROUP, :  
LTD., VILLANOVA :  
789 LANCASTER :  
ASSOCIATES, LLC :  
MAIA, LLC :  
:  
Defendant (s): NO. 09-1341

Oral Deposition of JERRY HOLTZ,  
taken pursuant to notice, held at  
Saul Ewing, 1200 Liberty Ridge Drive, Suite  
200, Wayne, Pennsylvania on  
January 27, 2010, beginning at  
approximately 9:45 a.m., before Michelle  
Palys, Court Reporter-Notary Public, there  
being present.

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(Whereupon, P-1 and P-4 were  
marked for identification.)

MR. DATTO: Good morning. This  
is Brett Datto, Counsel for Terence Feury  
in this litigation.

Yesterday I learned from a  
conversation with Mr. Moffitt that Scott  
Morrison would likely not be appearing for  
his deposition today. As a result of  
receiving that notification, I made a  
telephone call to Rob Grolnick who is Scott  
Morrison's personal attorney and was  
advised that, in fact, Mr. Morrison will  
not be appearing for his scheduled and  
noticed deposition today. I had been  
informed by Mr. Moffitt that apparently  
Mr. Morrison was in rehab. When I raised  
that subject with Mr. Grolnick, I was  
informed that Mr. Grolnick did not know  
whether or not that statement was accurate,  
but rather that Mr. Morrison, his  
understanding, was in a serious automobile

1 accident and was apparently hospitalized.  
2 I was told that Mr. Morrison would be  
3 appearing for a deposition and would be  
4 produced as soon as he is medically capable  
5 of sitting for a deposition which I've  
6 asked Mr. Grolnick to keep me informed of.

7 I did inform Mr. Grolnick and I'm  
8 putting on the record that I am filing a  
9 motion with the Court to have him produced  
10 for a deposition and that motion will be  
11 filed in the next few days.

12 For the record, I'm attaching P-1  
13 to the transcript which is an Amended  
14 Notice of Deposition of Scott Morrison  
15 dated January 6, 2010 notifying all Counsel  
16 that Mr. Morrison's deposition was  
17 scheduled for this morning at 9:30 a.m.

18 With respect to the defendant,  
19 Villanova 789 Lancaster Associates LLC,  
20 they have been noticed for their  
21 deposition. I had conferred with Scott  
22 Reidenbach, Villanova 789's Counsel,  
23 concerning the date of this deposition.  
24 While he indicated that he was on vacation.

1 today and I believe beginning on January  
2 25th and coming back tomorrow the 28th, he  
3 did indicate that he would have somebody in  
4 his office covering this deposition and it  
5 is now 9:50, and no one has appeared on  
6 behalf of Villanova 789 Associates.

7 I'm marking and attaching to the  
8 transcript P-2 which is an Amended Notice  
9 of Deposition for Villanova 789 Lancaster  
10 Associates that was mailed to all Counsel  
11 on January 6, 2010 requiring a corporate  
12 designee of Villanova 789 to be produced  
13 here pursuant to Federal Rule of Civil  
14 Procedure 30(b)(6). In as much as  
15 Mr. Reidenbach has not appeared nor it's my  
16 understanding from speaking with Mr.  
17 Moffitt that he is not producing anyone on  
18 behalf of Villanova 789 for the deposition  
19 here today.

20 MR. MOFFITT: Well, and it's my  
21 understanding, Mr. Datto, it's my  
22 understanding that Mr. Reidenbach intended  
23 to produce Mr. Morrison as a corporate  
24 designee of 789 Villanova or Villanova 789



1 Lancaster Associates, LLC. And for the  
2 same reasons that Mr. Morrison is not able  
3 to attend his deposition noticed in his  
4 individual capacity, obviously is unable to  
5 attend as a corporate designee.

6 MR. DATTO: Well, my  
7 understanding in several conversations with  
8 Mr. Reidenbach was that Mr. Morrison was  
9 not going to be the corporate designee of  
10 Villanova 789 Associates. You have  
11 information to the contrary. When I file  
12 my motion, I'm sure that issue will be  
13 brought to the Judge's attention as far as  
14 who is going to be the proper corporate  
15 designee of Villanova 789.

16 Let me also state on the record  
17 that I'm also filing a motion to compel --  
18 strike that.

19 I have previously filed a motion  
20 to compel discovery from Villanova 789. We  
21 had a conference call with the Judge in  
22 connection with some outstanding discovery  
23 issues and as of today, January 27th, that  
24 motion has not been ruled upon and a